

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DZ BANK AG DEUTSCHE
ZENTRAL-
GENOSSENSCHAFTSBANK,
FRANKFURT AM MAIN, NEW
YORK BRANCH,

Plaintiff,

v.

MEYER IRREVOCABLE TRUST, et
al.,

Defendants.

CASE NO. C14-1133JLR

ORDER GRANTING
PLAINTIFF'S MOTION TO STAY
THE CASE AND STRIKING
PLAINTIFF'S MOTION TO
AMEND AND DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION

Before the court are Plaintiff DZ Bank AG Deutsche Zentral-
Genossenschaftsbank, Frankfurt AM Main, New York Branch's ("DZ Bank") combined
motion to amend its complaint and stay the case (Combined Mot. (Dkt. # 18)) and
Defendants Meyer Irrevocable Trust ("the Trust"), Insurance Choices 4 U, Inc. ("IC4U"),

1 and Insurance Choices For You, Inc.’s (“ICFY”) motion for summary judgment (MSJ
 2 (Dkt. # 17)). Defendants have filed objections to DZ Bank’s motion (Obj. (Dkt. # 22)),
 3 and DZ Bank has filed a reply in support of its motion (Reply (Dkt. # 24)) and also a
 4 response to Defendants’ motion for summary judgment (Resp. (Dkt. # 19)). The court
 5 has reviewed the submissions of the parties, the balance of the record, and the applicable
 6 law. Being fully advised,¹ the court GRANTS DZ Bank’s motion to stay and STRIKES
 7 DZ Bank’s motion to amend and Defendants’ motion for summary judgment without
 8 prejudice.

9 **II. BACKGROUND**

10 This case arises out of a debt owed to DZ Bank as well as subsequent transfers of
 11 assets that DZ Bank alleges were fraudulent. Most of the underlying facts are set forth in
 12 this court’s order in a related case, *see DZ Bank AG Deutsche Zentral-*
 13 *Genossenschaftsbank, Frankfurt AM Main, New York Branch v. Louis Meyer (In re*
 14 *Meyer)*, No. C14-0869JLR, Dkt. # 37 (W.D. Wash.), and are only summarized in part
 15 here.

16 DZ Bank filed an adversary complaint in the bankruptcy proceedings of debtors
 17 (and non-parties here) Louis Phillipus Meyer and Lynn Meyer (“the Meyers”). *See id.* at
 18 6; (Obj. at 1.) The Meyers had personally guaranteed a debt of over \$1.7 million to DZ
 19 Bank on behalf of Mr. Meyer’s business, Choice Cash Advance, LLC² (“Choice”), which

21 ¹ The court deems oral argument to be unnecessary for its resolution of these motions.

22 ² Defendants refer to this entity as “Choice Insurance.” (Obj. at 1.)

1 Choice had taken out in order to finance the purchase of several insurance franchises.
2 *See In re Meyer*, No. C14-0869JLR, Dkt. # 37 at 3. Choice's assets were collateral for
3 the debt. *See id.* After Choice and the Meyers began experiencing difficulties, Mr.
4 Meyer initiated a series of transactions that transferred Choice's assets to Meyer
5 Insurance ("MI"), a company that he owned; then transferred MI's assets to Defendant
6 IC4U; then caused Defendant the Trust to purchase all the stock of IC4U; and finally
7 caused the Trust to sell IC4U to another entity. *See id.* at 5. In the adversary
8 proceedings, DZ Bank alleged that these transfers were fraudulent and that as a result a
9 portion of the Meyers' overall indebtedness was non-dischargeable under § 523(a)(2)(A)
10 of the Bankruptcy Code. *See id.* at 6-7.

11 On May 9, 2014, the United States Bankruptcy Court for the Western District of
12 Washington entered a non-dischargeable judgment in favor of DZ Bank and against the
13 Meyers in the amount of \$123,200.00, which was the value of the MI assets traceable to
14 DZ Bank's collateral.³ *See id.* at 7; (Combined Mot. at 2; Obj. at 4.) DZ Bank appealed
15 to this court on June 13, 2014, arguing that the judgment should have been for
16 \$385,000.00—the value of all the MI assets transferred to IC4U. *See In re Meyer*, No.
17 C14-0869JLR, Dkt. # 1 at 96-98 (Notice of Appeal), Dkt. # 12 (Appellant's Brief). The
18 legal basis of this argument is the Washington Uniform Fraudulent Transfers Act
19 ("WUFTA"). *See id.* Dkt. # 37 at 11-12. The court denied DZ Bank's appeal and

20
21 ³ The bankruptcy court ruled on summary judgment that DZ Bank knew of and consented
22 to the transfer from Choice to MI and that such transfer therefore could not form the basis of a
fraudulent transfer claim. *See In re Meyer*, No. C14-0869JLR, Dkt. # 37 at 4 n.2. DZ Bank did
not challenge that ruling in its appeal from the bankruptcy court's final judgment. *See id.*

1 affirmed the bankruptcy court. *See id.* at 19. The court concluded that WUFTA requires
 2 a plaintiff-creditor at a minimum to demonstrate some claim to the transferred assets
 3 before a transfer can be deemed fraudulent under WUFTA. *See id.* at 11-19. Because MI
 4 was not indebted to DZ Bank and because DZ Bank could trace its collateral to only
 5 \$123,200.00 of MI's assets, the court held that DZ Bank was entitled to a judgment of
 6 only \$123,200.00. *See id.* at 18-19. On January 27, 2015, DZ Bank appealed this court's
 7 order to the Ninth Circuit. *See id.* Dkt. # 39.

8 On July 25, 2014, after the bankruptcy court entered its final judgment, DZ
 9 Bank filed the instant lawsuit asserting fraudulent transfer claims against Defendants for
 10 their receipt of the assets transferred by the Meyers and MI. (*See* Compl. (Dkt. # 1);
 11 Combined Mot. at 4.) DZ Bank's complaint in this case prays for judgment in the
 12 amount of \$123,200.00; fees, costs, and interest; recovery of the transferred property; and
 13 "such further relief as the court deems just and proper under the circumstances." (Compl.
 14 ¶¶ 28, 33, 38.) After Defendants answered, the court issued a scheduling order which did
 15 not set a deadline for filing amended pleadings.⁴ (Sched. Ord. (Dkt. # 16).)

16 On January 14, 2015, following this court's order in *In re Meyer*, the Meyers sent
 17 DZ Bank a check for \$123,290.00. (*See* Stern Decl. (Dkt. # 17-1) ¶¶ 2-3 Exs. 1-2.) DZ
 18 Bank accepted the check and recorded a satisfaction of its judgment against the Meyers
 19 on February 20, 2015. (*Id.* ¶ 4 Ex. 3.) The satisfaction is conditional, however, insofar
 20 as it notes DZ Bank's pending appeal to the Ninth Circuit and provides that DZ Bank's

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 22 ⁴ This court recently received this case from Judge Ricardo S. Martinez on transfer as
 related to *In re Meyer*. (*See* Order Reassigning Case (Dkt. # 26).)

1 acceptance of the amount of the “unsatisfactory judgment” does not satisfy its entire
2 claim. (*Id.*)

3 On March 4, 2015, Defendants filed their motion for summary judgment. (*See*
4 MSJ.) Defendants’ motion, which is two pages in length, seeks dismissal of DZ Bank’s
5 claims on the basis that DZ Bank has received the entire sum sought in its complaint;
6 namely, \$123,200.00. (*See id.*) Defendants argue that DZ Bank’s acceptance of this
7 sum from the Meyers constitutes a release of Defendants, who are the Meyers’ joint
8 tortfeasors according to DZ Bank’s allegations. (*See id.*) On March 23, 2015, DZ Bank
9 filed both its response to Defendants’ motion and its combined motion to amend its
10 complaint and stay the case. (*See* Resp. at 1; Combined Mot. at 1.)

11 DZ Bank’s combined motion asks the court to permit DZ Bank to amend its
12 complaint to seek damages in the amount of \$385,000.00, and requests that the court stay
13 all proceedings in this case pending the outcome of DZ Bank’s appeal in *In re Meyer*.
14 (Combined Mot. at 2.) In support of its motion to amend, DZ Bank argues that it should
15 be permitted to pursue “all of its potential monetary damages against the Defendants,”
16 and that amendment will not prejudice Defendants. (*Id.* at 5-6.) Regarding its motion to
17 stay, DZ Bank contends that the outcome of its appeal in *In re Meyer* will significantly
18 impact this litigation. (*See id.* at 2 (“If DZ Bank’s appeal is successful, DZ Bank’s
19 damages against the defendants herein will be established at \$385,000. If unsuccessful,
20 DZ Bank may have no claims against the defendants herein, as the amount of damages
21 originally sought by DZ Bank, \$123,200, has been paid.”).) Accordingly, DZ Bank
22 concludes that it would not be economical for the court or the parties to continue

1 litigating this case while DZ Bank's appeal is pending. (*Id.* at 2, 6.) The parties' motions
2 are now before the court.

3 III. DISCUSSION

4 The court first turns to DZ Bank's request to stay this case pending the outcome of
5 its appeal before the Ninth Circuit in *In re Meyer*. (Mot. at 2.) A district court has the
6 discretionary power to stay its proceedings. *Lockyer v. Mirant Corp.*, 398 F.3d 1098,
7 1109 (9th Cir. 2005). This power to stay is "incidental to the power inherent in every
8 court to control the disposition of the causes on its docket with economy of time and
9 effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254
10 (1936); *see also Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1077 (3rd Cir.
11 1983) (holding that the power to stay proceedings comes from the power of every court
12 to manage the cases on its docket and to ensure a fair and efficient adjudication of the
13 matter at hand). When considering whether to stay a case, the court weighs a series of
14 competing interests: (1) the possible damage that may result from the granting of the
15 stay; (2) the hardship or inequity which a party may suffer in being required to go
16 forward; and (3) the orderly course of justice measured in terms of the simplifying or
17 complicating of issues, proof, and questions of law which could be expected to result
18 from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299
19 U.S. at 254-55); *see also Lockyer*, 398 F.3d at 1110.

20 With respect to the first factor—possible damage if a stay is granted—Defendants
21 object to DZ Bank's requested stay but offer no discussion of how a stay might damage
22 them. (*See* Obj. at 8-9.) Rather Defendants simply assert that DZ Bank improperly seeks

1 to “keep Defendants on the hook for another year while it pursues a frivolous appeal.”
 2 (*Id.* at 9.) Defendants fail to explain, however, what harm they might suffer from waiting
 3 for the resolution DZ Bank’s appeal. Furthermore, delay alone cannot be a sufficient
 4 reason not to stay a case, as every stay by its very nature causes delay.⁵ *Cf. Lockyer*, 398
 5 F.3d at 1112 (noting that the objecting party was alleging ongoing harm for which it
 6 sought injunctive relief and that delay might therefore damage the objecting party).

7 The court next considers the second factor: whether DZ Bank might suffer
 8 hardship or inequity by being required to go forward. *See CMAX, Inc.*, 300 F.2d at 268.
 9 DZ Bank argues that requiring it to go forward here could cause it to waste resources.
 10 (*See Mot.* at 2, 6.) This argument is premised on the idea that the Ninth Circuit’s
 11 decision may either significantly advance DZ Bank’s position in this case or spell the end
 12 of its claims against Defendants. (*See id.* at 2.) As discussed in more detail below under
 13 the third factor, the court finds this argument persuasive and therefore concludes that this
 14 factor favors granting a stay.

15 Finally, the court concludes that the third factor—whether a stay would further the
 16 orderly course of justice—weighs in favor of a stay. Without expressing an opinion on
 17 the merits of this case, the court finds that there is a significant possibility that the Ninth

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 19 ⁵ The court also notes that Defendants’ characterization of DZ Bank’s appeal as
 20 “frivolous” (*Obj.* at 9) and involving “matters addressed by long-standing law” (*id.* at 5 n.4) is
 21 inaccurate. As the court noted in its order affirming the bankruptcy court, the court was unable
 22 to find any authority interpreting WUFTA on the precise issue before the court. *See In re Meyer*,
 No. C14-0869JLR, Dkt. # 37 at 14. Consequently, the court interpreted WUFTA with reference
 to Washington corporate law and federal case law construing analogous provisions in the
 Bankruptcy Code. *See id.* at 14-18. Although the court stands by its analysis, it is hardly beyond
 the realm of possibility that the Ninth Circuit might disagree with the court’s reasoning.

1 Circuit's decision in *In re Meyer* will simplify the issues, proof, and questions of law in
 2 this case. *See CMAX, Inc.*, 300 F.2d at 268. The transfers at issue in that case and this
 3 one are nearly identical. (*Compare* Compl.) with *In re Meyer*, No. C14-0869JLR, Dkt.
 4 # 37. If the Ninth Circuit determines that the transfers in that case were fraudulent as to
 5 DZ Bank in the amount of \$385,000.00, the contested issues in this case may be reduced.
 6 If on the other hand the Ninth Circuit rejects DZ Bank's appeal, this case may end, as DZ
 7 Bank's damages would likely be established at only \$123,200.00, an amount which DZ
 8 Bank concedes it has already received from the Meyers. (*See* Mot. at 2.) In either
 9 scenario a stay pending the Ninth Circuit's ruling would further the orderly course of
 10 justice and could provide a substantial economy in judicial and party resources. *See*
 11 *CMAX, Inc.*, 300 F.2d at 268.⁶

12 In sum, the court finds that the relevant factors favor staying this case until the
 13 Ninth Circuit issues a decision on DZ Bank's pending appeal in *In re Meyer*. *See CMAX*,

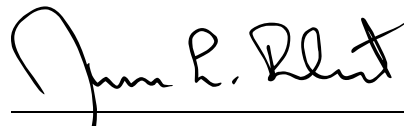
15 ⁶ Defendants suggest that res judicata would bar DZ Bank's claims against them even if
 16 DZ Bank prevails on its appeal before the Ninth Circuit. (*See* Obj. at 10-12.) Defendants'
 17 discussion of res judicata is confused and abortive, however, and neglects to develop arguments
 18 and offer evidence without which the court cannot render a decision on this issue. For example,
 19 Defendants assert but offer no evidence that DZ Bank knew during the bankruptcy proceedings
 20 about the alleged transfers involving ICFY. (*See id.* at 11 n.7.) DZ Bank contradicts that
 21 assertion in its complaint (*see* Compl. ¶ 23), and the court will not simply resolve the conflict in
 22 Defendants' favor without any supporting evidence before it. Defendants also fail to discuss any
 of the criteria that inform the identity-of-claims analysis and offer only general principles
 regarding the privity inquiry. (*See* Obj. at 10-11); *see also, e.g., Harris v. Cnty. of Orange*, 682
 F.3d 1126, 1132 (9th Cir. 2012) (discussing the elements of res judicata—identity of claims,
 final judgment on the merits, and identity of or privity between parties—as well as the four
 criteria that courts use to determine identity of claims); *Headwaters Inc. v. U.S. Forest Serv.*, 399
 F.3d 1047, 1053-54 (9th Cir. 2005) (discussing the privity requirement); *Zweizig v. Rote*, No.
 3:14-cv-00406-ST, 2014 WL 7229202, at *5-7 (D. Or. Dec. 16, 2014). Accordingly, the court
 declines to render a decision on the issue of res judicata at this time.

1 *Inc.*, 300 F.2d at 268. Furthermore, having decided that a stay is appropriate, the court
2 concludes that it would not be a proper use of judicial resources to rule on DZ Bank's
3 motion to amend or Defendants' motion for summary judgment at this time. The court
4 therefore strikes DZ Bank's motion to amend and Defendants' motion for summary
5 judgment but without prejudice to re-raising the issues and arguments contained therein
6 after the court lifts the stay.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the court GRANTS in part DZ Bank's combined
9 motion (Dkt. # 18). Specifically, the court GRANTS DZ Bank's motion to stay and
10 SUSPENDS all current case schedule deadlines pending a decision by the Ninth Circuit
11 on DZ Bank's appeal in *In re Meyer*. In addition, the court STRIKES DZ Bank's motion
12 to amend and Defendants' motion for summary judgment (Dkt. # 17) without prejudice to
13 re-raising the issues and arguments contained therein after the court lifts the stay.
14 Finally, the court ORDERS the parties to submit a joint status report within 14 days of
15 the date on which the Ninth Circuit issues its decision (not mandate) in *In re Meyer* or the
16 case is otherwise resolved.

17 Dated this 9th day of June, 2015.

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21 JAMES L. ROBART
22 United States District Judge